FILED
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OFFICE OF THE CLERK

No. _____

In The

SUPREME COURT OF THE UNITED STATES

♦

IN RE: HARRY VINSON
Petitioner

v.

MISSISSIPPI REAL ESTATE APPRAISAL LICENSING BOARD
Respondents

♦

On Petition For Writ Of Certiorari To The Supreme Court of Mississippi

♦

PETITION FOR WRIT OF CERTIORARI

♦

Harry Vinson
P.O. Box 791
New Albany, MS 38652
(662) 534-2424
in propria persona

QUESTION PRESENTED

Whether the State of Mississippi through The Supreme Court of Mississippi denied Petitioner a judge when the judges that were assigned to hear the case recused themselves.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Harry Vinson prays that a writ of certiorari issue to review the judgment of The Supreme Court of Mississippi entered in this matter on 22 June, 2000 denying Petitioner's Petition for Rehearing to have a judge, a constitutional right he enjoys by and through Amendments IX and XIV.

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OPINIONS BELOW

IN RE: HARRY VINSON v. MISSISSIPPI REAL ESTATE APPRAISAL LICENSING BOARD NO. 2000-AP-00645, Order appointing a judge, April 23, 2000. [App. 1 - 2]

IN RE: HARRY VINSON v. MISSISSIPPI REAL ESTATE APPRAISAL LICENSING BOARD No. 2000-AP-00645, Order denying petition to set aside special judicial appointment May 23, 2000. [App. 5 - 6]

IN RE: HARRY VINSON v. MISSISSIPPI REAL ESTATE APPRAISAL LICENSING BOARD No. 2000-AP-00645, Order denying petition for rehearing, June 22, 2000. [App. 7]

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JURISDICTION

The Supreme Court of Mississippi entered an order May 22, 2000 and Petitioner's petition for rehearing was denied June 22, 2000. The Petition for Writ of Certiorari was timely filed August 26, 2000. The jurisdiction of this court is invoked

under USC § 1251(b)(2); U.S.A. Constitution Article III Section 2, *"in all cases...in which a state shall be party"*; Supreme Court of The United States Rule 10(a).

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CONSTITUTIONAL PROVISIONS

USA Constitution Bill of Rights

AMENDMENT I...

"To petition the government for redress of grievances."

AMENDMENT IX...

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

AMENDMENT XIV ...

"due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

USA Constitution Article III §2...

"The judicial power shall extend to all cases, in law and equity arising under the Constitution, the laws of the United States and those in which a state shall be party".

———♦———

STATEMENT OF THE CASE

This case is a controversy involving the State of Mississippi, its legislative branch, its judiciary

branch, The Mississippi Constitution and The Constitution of The United States.

The judges of jurisdiction assigned to hear Petitioner's case in The Circuit Court of Union County, Mississippi recused themselves and the Mississippi Supreme Court issued an order appointing a special judge April 23, 2000 and used as its authority Mississippi Code Annotated §9-1-105(6), which is in total conflict with the Mississippi Constitution Article 6 Section 153. This creates a conflict at law under the Constitution of The United States Bill of Rights XIV Amendment. The State of Mississippi is a party to this petition.

Petition to set aside special judicial appointment was filed May 15, 2000 in Cause No. 2000-AP-00645 and an order denying petition was entered May 22, 2000, the order issued by Chief Justice of The Supreme Court of Mississippi states that M.C.A. §9-1-105(6) is not in derogation of Article 6 Section 153 of the Mississippi Constitution. Order denying Petition for Rehearing was entered June 22, 2000.

REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

A. SUMMARY OF THE ARGUMENT:

Petitioner enjoys rights under the Constitution of The United States, especially the right to a judge, the right to petition the government for grievance and the expectation that

the courts will always be open to him and includes the right to due process, right to jury trial, right to due process and equal protection of the law and all rights retained by the people.

B. ARGUMENT:

This case involves the State of Mississippi, its legislative branch, its judiciary branch and the Mississippi Constitution and the Constitution of The United States, to wit:

This case is a controversy involving the State of Mississippi as the Petitioner filed a cause of action in the Circuit Court of Union County, Mississippi and the two judges of jurisdiction recused themselves and The Mississippi Supreme Court Appointed a person by the name of William R. Lamb to hear the case.

The Supreme Court of Mississippi could not appoint William R. Lamb to hear the case as a special judge in Mississippi as a matter at law, to be a judge one must first qualify under the Mississippi Constitution Article 6 Section 154, which mandates to be a judge one must have practiced law for five years and have obtained the age of 26 years and must be a citizen of Mississippi for five years. Under Mississippi Constitution Article 6 Section 153 it mandates one "shall be elected by the people". Section 165 of the Mississippi Constitution conveys the power to the governor to appoint judges.

William R. Lamb was not elected as a Circuit Court Judge under Article 6 Section 153 of the Mississippi Constitution, "by the people" and was

not appointed under Article 6 Section 165 by the governor of the State of Mississippi.

The Mississippi Supreme Court could not appoint William R. Lamb and the Mississippi Legislature could not pass any law in conflict with the Mississippi Constitution, as the Mississippi Constitution is the supreme law of the land in the State of Mississippi and any law passed by the legislature that is in disagreement with that constitution provision is null and void. *Sixteenth American Jurisprudence Second Edition, Section 256...*

> *"An unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted... Since an unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it..."*

MARBURY v. MADISON, 1 Crunch 137 mandates that the Constitution of The United States is the supreme law of the land. If The Mississippi Constitution is in agreement with the Constitution of The United States then it is also the supreme law in Mississippi.

The legislature in Mississippi passed an act under M.C.A. §9-1-105(6) which is in total disagreement with the Mississippi Constitution Article 6 Section 153 & 165 on the appointment

and what authority it takes to be a judge in Mississippi. The Mississippi law cited, [§9-1-105(6)] sets forth that a judge presently setting could be appointed or a retired chancery or circuit judge, the conflict between this law and the Mississippi Constitution is section 165 authorizes the governor to appoint a judge and not the Mississippi Supreme Court, a retired judge does not qualify under section 153 as he, "shall be elected by the people", so William R. Lamb was not appointed by the governor and was not elected by the people and is therefore not a judge. The State of Mississippi cannot pass or enforce any law that is not in agreement with the Mississippi Constitution. Both the legislation and the Constitution must be in total agreement and if a law passed by the legislature in not in agreement with the constitution then it becomes null and void and the Mississippi Constitution now becomes the supreme authority.

The Petitioner has the absolute right to a judge who has qualified as a judge under the Mississippi Constitution of the State of Mississippi. The USAC Bill of Rights XIV Amendment secures to Petitioner his right to a judge, the Supreme Court of The United States in *DUNCAN v. LOUISIANA*, 391 U.S. 145 mandated upon Louisiana and all other states that the Constitution of The United States and the Bill of Rights are mandated upon the states by and through the XIV Amendment...

> *"The fourteenth amendment denies the states the power to deprive any person of life, liberty or property, without due process of law".*

In the *DUNCAN* case, the Supreme Court, went through the USAC Bill of Rights and showed how each Bill of Rights was mandated upon the states, it also mandated upon the State of Louisiana that Duncan was entitled to a jury trial.

If Duncan was entitled to a jury trial in Louisiana, then Petitioner Vinson is entitled to a judge in Mississippi.

This is a controversy on the issue of a judge in which the State of Mississippi is a party, its legislative branch, and the judiciary branch, thus the Supreme Court of The United States has original jurisdiction to resolve the controversy.

This court also has jurisdiction over the controversy as there are constitutional questions involved and under USA Constitution Article III Section 2 this court has original jurisdiction on actions arising under the constitution, which is Petitioner's right under Constitution Bill of Rights Amendment I to petition the government for redress of grievance and that petition was for a judge to hear his case; under the XIV Amendment the right to a judge and IX Amendment retains his right to a judge.

Under The Constitution of Mississippi to be a judge, one must qualify under Article 6 Section 154 and be elected by the people Article 6 Section 153. Even if one qualifies under Article 6 Section 154 he/she is not a judge in Mississippi until elected under Article 6 Section 153 or appointed by the governor Article 6 Section 165, thus

William R. Lamb is not a judge in Mississippi and Petitioner is entitled to a judge. This court is mandated by and through the Bill of Rights XIV Amendment to secure to Petitioner a judge in Mississippi to hear his case.

CONCLUSION

For all the foregoing reasons The Supreme Court of The United States should grant the writ of certiorari as it has jurisdiction under the Constitution of The United States Article III Section 2 and the Bill of Rights XIV Amendment.

Respectfully submitted,

Harry Vinson
P. O. Box 791
New Albany, MS 38652

in propria persona

August 2000

IN THE SUPREME COURT OF MISSISSIPPI
No. 2000-AP-00645

IN RE: HARRY VINSON
v. MISSISSIPPI REAL ESTATE
APPRAISAL LICENSING BOARD
No. U2000-09; In the Circuit Court of
Union County, Mississippi

ORDER

This matter is before the Court upon request by the Judges of the Third Circuit Court District for the appointment of a special judge to preside over the proceedings in the above numbered and styled cause, which is presently pending in the Circuit Court of Union County, Mississippi. This request is necessitated by the recusal of the Judges for said district by virtue of an Order of Recusal executed in said case on April 12, 2000.

Having fully considered the matter, the Court finds that the request is proper pursuant to Miss. Code Ann. Section 9-1-105.

IT IS THEREFORE ORDERED AND ADJUDGED that Honorable William R. Lamb, be and he is, hereby specially appointed Special Judge to preside and conduct proceedings in the above referenced case pursuant to and by authority of Mississippi Code Ann. Section 9-1-107.

IT IS FURTHER ORDERED that the Clerk of this Court transmit copies of this order to the Honorable William R. Lamb; Honorable Henry L. Lackey and Honorable R. Kenneth Coleman, Judges of and for the Third Circuit Court District; and, to the Circuit Clerk of Union County, who is directed to file this Order and deliver copies to all

counsel of record in said case.

SO ORDERED this the 26th day of April, 2000.

/s/
Lenore L. Prather,
Chief Justice

File date: April 28, 2000

Filed this the 1st day of May, 2000
Billy Stanford, Circuit Clerk
by Rhonda Dowdy, D.C.

IN THE SUPREME COURT OF MISSISSIPPI
No. 2000-AP-00645

IN RE: HARRY VINSON
v. MISSISSIPPI REAL ESTATE
APPRAISAL LICENSING BOARD
No. U2000-09; In the Circuit Court of
Union County, Mississippi

PETITION TO SET ASIDE SPECIAL
JUDICIAL APPOINTMENT

COMES NOW Harry Vinson, appearing in propria persona, sui juris and not pro se, to petition the court to set aside special judicial appointment Order dated 26 April 2000 for the following reasons; to wit:

I.

The appointment of William R. Lamb as special judge in this case creates a conflict at law between the Mississippi Constitution Article 6 Section 153 and with Mississippi Code Annotated §9-1-105. Where there is a conflict with the Mississippi Constitution and a statute the Constitution is the supreme law of the land.

The Conflict regarding William R. Lamb, the Mississippi Constitution Article 6 Section 153 sets forth that judges of the Circuit and Chancery Courts **shall** be elected by the people. If the judge is not elected by the people, then they are not to be judges under the Mississippi Constitution. To my knowledge the Mississippi Constitution Article 6 Section 153 has not been amended, repealed nor has there been a constitutional convention making such changes. William R. Lamb does not qualify under the Constitution of Mississippi, as he has

not been elected by the people, therefore he is not an elected judge.

No where in the Mississippi Constitution does it give the Mississippi Supreme Court the authority to appoint someone as judge that has not been elected by the people.

The Mississippi Constitution Article 6 Section 165 sets forth the governor may commission another, or others, of law knowledge [not necessarily a bar member] to preside at such term or during such disability or disqualification in the place of the judge... there still is no mention of any authority given to the Mississippi Supreme Court.

II.

M.C.A. §9-1-105 under which the Mississippi Supreme Court claims authority in the appointment of William R. Lamb is in conflict with the Mississippi Constitution and this Petitioner challenges the constitutionality of M.C.A. §9-1-105.

III.

Petitioner now moves the Mississippi Supreme Court to dismiss and set aside its order of 26 April 2000 for the appointment of William R. Lamb as special judge for all the reasons stated herein as a matter at law, and to secure and protect Petitioner's due process and equal protection of the law.

This the 15th day of May, 2000.

Respectfully submitted
without prejudice,
/s/
Harry Vinson
New Albany, MS 38652

IN THE SUPREME COURT OF MISSISSIPPI
No. 2000-AP-00645

IN RE: HARRY VINSON
v. MISSISSIPPI REAL ESTATE
APPRAISAL LICENSING BOARD
No. U2000-09; In the Circuit Court of
Union County, Mississippi

ORDER

This matter is before the Court on a petition filed by plaintiff to set aside special judge appointment order dated April 26, 2000. Pursuant to Mississippi Code Ann. Section 9-1-105, the Judges of the Third Circuit Court District executed an Order of Recusal in said case on April 12, 2000. Special Judge William R. Lamb was appointed to preside and conduct proceedings in the above referenced case pursuant to and by authority of Mississippi Code Ann. Section 9-1-107.

> Pursuant to Mississippi Code Ann. Section 9-1-105(6):
> A person appointed to serve as a special judge may be any presently sitting or retired chancery, circuit or county court judge, Court of Appeals judge or Supreme Court Justice, or any other person possessing the qualifications of the judicial office for which the appointment is made...

These sections are not in derogation of Art. 6 Section 153 of the Mississippi Constitution.

Having considered this matter, the Court

finds that the petition should be denied.

IT IS THEREFORE ORDERED that the petition filed by plaintiff to set aside special judge appointment order dated April 26, 2000 is denied.

SO ORDERED this the 22nd day of May 2000.

/s/
Lenore L. Prather,
Chief Justice

File date: May 23, 2000

IN THE SUPREME COURT OF MISSISSIPPI
No. 2000-AP-00645

IN RE: HARRY VINSON
v. MISSISSIPPI REAL ESTATE
APPRAISAL LICENSING BOARD
No. U2000-09; In the Circuit Court of
Union County, Mississippi

ORDER

This matter has come before the Court on Petition for Rehearing filed by Harry Vinson wherein he seeks reconsideration of an order entered on May 23, 2000. By that order the Court denied Vinson's Petition to Set Aside Special Judicial Appointment. The petition is found to be without merit. Further, under the provisions of M.R.A.P. 27(g) motions and petitions, with exceptions not here applicable, are subject to rehearing, reconsideration, vacation or modification only on the Court's own motion. The Petition for Rehearing should therefore be denied.

IT IS THEREFORE ORDERED that the Petition for Rehearing filed by Harry Vinson is hereby denied.

SO ORDERED, this the 22nd day of June, 2000.

/s/
Lenore L. Prather,
Chief Justice

File date: June 26, 2000